

## Message Text

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ACTION EB-11

INFO OCT-01 ARA-16 ISO-00 COME-00 SPC-03 AID-20 NSC-10

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SIL-01 H-03 L-03 IGA-02 TAR-02 DRC-01 /144 W

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FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 4598

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E.O. 11652: N/A

TAGS: ETRD, ECON, EFIN, EIND, CU, AR

SUBJ: ARGENTINE/CUBA TRADE - LEGAL QUESTIONS

REF: A. STATE 233338; B. BA 7963; C. BA 8183

1. LAW ON PATENTS AND TECHNOLOGY (LAW 19.231, SEPT 13, 1971)  
ESTABLISHED NATIONAL REGISTRY FOR CONTRACTS OF LICENSES AND  
TRANSFERS OF TECHNOLOGY. CONTRACTS MUST BE REVIEWED AND APPROVED  
BY REGISTRY AUTHORITIES AS PREREQUISITE FOR AUTHORIZATION FROM  
CENTRAL BANK TO MAKE PAYMENTS ABROAD. LAW PROVIDED FOR INITIAL  
AUTOMATIC REGISTRATION OF CONTRACTS CONCLUDED BEFORE IT  
ENTERED INTO FORCE (AND MOST OR ALL WERE SO REGISTERED IN 1972  
AND 1973), BUT REQUIRED THAT ALL SUCH CONTRACTS BE ADAPTED TO  
CONFORM TO ITS REQUIREMENTS BY JAN 1, 1974. THESE REQUIRE-  
MENTS CONSIST PRIMARILY OF SET OF NEGATIVE CONDITIONS, EACH OF  
WHICH FORMS SUFFICIENT, BUT NOT NECESSARY, GROUNDS FOR  
AUTHORITIES TO REFUSE REGISTRATION OF AN INDIVIDUAL CONTRACT.  
FOR INSTANCE, AUTHORITIES MAY REFUSE REGISTRATION OF CONTRACT WHEN  
"THE CONTRACT INVOLVES A BAN ON EXPORT OR SALES OF EXPORTABLE  
NATIONAL PRODUCTS, MAKES SELLING RIGHTS SUBORDINATE TO PERMISSION  
FROM ABROAD OR IN ANY WAY LIMITS OR REGULATES EXPORTS." LAW  
THUS GIVES AUTHORITIES CONSIDERABLE DISCRETION TO DECIDE ON  
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CASE BY CASE BASIS WHETHER AN INDIVIDUAL CONTRACT MAY OR MAY NOT BE  
REGISTERED. DUE TO DELAYS IN ISSUANCE OF IMPLEMENTING REGUL-

TIONS AND UNCERTAINTY RE CRITERIA TO BE FOLLOWED BY AUTHORITIES, MANY OF PRE-EXISTING CONTRACTS STILL BEING REVISED BY INTERESTED PARTIES AND THUS HAVE NOT YET BEEN REVIEWED AND APPROVED BY AUTHORITIES. NOW APPEARS THAT LIMITED POSTPONEMENT OF JAN 1 DEADLINE LIKELY. GOA ALSO UNDERSTOOD TO BE PREPARING NEW DRAFT LAW TO DEAL WITH SPECIFIC QUESTION OF LICENSING AGREEMENTS BETWEEN PARENT AND SUBSIDIARY FIRMS, IN ACCORD WITH REQUIREMENTS OF NEW FOREIGN INVESTMENT LAW.

2. AUTO FIRMS, IN CITING 1973 LAW ON REGISTRATION OF PATENTS AND TECHNOLOGY, WERE IN FACT REFERRING TO MIN OF ECON RESOLUTION OF SEPT 1973 WHICH ESTABLISHED ADDITIONAL REGULATIONS FOR OPERATION OF REGISTRY UNDER 1971 LAW. NEW REGULATIONS REQUIRE ADDITIONAL INFORMATION BE PROVIDED WHEN CONTRACTS ARE SUBMITTED FOR APPROVAL. ALSO REITERATES THAT PRE-EXISTING CONTRACTS, WHICH UP TO NOW ENJOYED AUTOMATIC REGISTRATION, MUST BE PRESENTED TO AUTHORITIES BY JAN 1, 1974, IN FORM WHICH CONFORMS TO REQUIREMENTS OF 1971 LAW.

3. FOREIGN INVESTMENT LAW OF 1971 (LAW 19.151) DID NOT APPLY TO PREVIOUS INVESTMENTS OR INVESTMENT AGREEMENTS, EXCEPT FOR OBLIGATION TO REGISTER WITH GOA AND RESTRICTIONS ON USE OF LOCAL BANK CREDIT. THIS STATUTE NOW SUPERSEDED BY NEW FOREIGN INVESTMENT LAW APPROVED BY CONGRESS NOV 7, 1973 (REF C). NEW MEASURE NOMINALLY OFFERS OPTION FOR PREVIOUS INVESTMENTS TO REMAIN UNDER ORIGINAL LEGAL REGIMES, BUT STIFF TAX PENALTIES WILL BE LEVIED ON REMITTANCES IF INVESTORS DO NOT CONCLUDE NEW AGREEMENTS WITH GOA UNDER PROVISIONS OF 1973 LAW. NEW LAW SPECIFICALLY PROHIBITS INVESTMENTS WHICH ARE QUOTE SUBJECT TO LIMITATIONS OF THEIR POSSIBILITIES FOR EXPORT END QUOTE.

4. REFERENCE TO GENERAL COMMERCIAL CODE AND OTHER LEGAL CITATIONS REPORTED REF B BASED ON EMBASSY'S DISCUSSIONS OCT 29 WITH LOCAL REPRESENTATIVES US AUTO FIRMS, WHO HAD RECEIVED INITIAL OPINION OF THEIR LEGAL COUNSEL. EMBASSY NOW ADVISED THIS REFERENCE INCORRECT AND THAT CODE DOES NOT SPECIFICALLY DENY FIRMS RIGHT TO REFUSE TO SELL.

5. LEGAL ADVISORS TO FIRMS CITE TWO EXISTING LAWS WHICH THEY LIMITED OFFICIAL USE  
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BELIEVE COULD, THROUGH VERY BROAD INTERPRETATION OF THEIR PROVISIONS, BE INVOKED IN LEGAL CHALLENGE OF FIRMS' REFUSAL TO SELL TO A PARTICULAR CLIENT. THESE ARE ANTI-TRUST LAW (LAW 12.906, DEC 30, 1946) AND THE LAW OF SUPPLY OR PRICE CONTROL LAW (LAW 19.508, FEB 23, 1972).

6. APPLICABLE SECTION OF ANTI-TRUST LAW WOULD BE ARTICLE 2, WHICH DESCRIBES AS ACTS WHICH ARE ESPECIALLY CONSIDERED UNDER OBJECTIVES OF LAW TO BE ACTS OF MONOPOLY OR THOSE TENDING TO MONOPOLY "(A) THOSE THAT IMPEDE OR TEND TO IMPEDE THE FREE

COMPETITION OF OTHER PHYSICAL OR LEGAL PERSONS IN ONE OR MORE BRANCHES OF PRODUCTIONS, INDUSTRY, LAND, AIR, RIVER, OR OCEAN TRANSPORT, OR INTERNAL OR EXTERNAL TRADE." ARTICLE 3 OF LAW ESTABLISHES FINES AND/OR IMPRISONMENT FOR ACTIONS DESCRIBED ARTICLE 2.

7. PERTINENT SECTION OF PRICE CONTROL LAW (ARTICLE 9) STATES THAT "ANY ACT OR OMISSION WHICH TENDS TO BRING ABOUT AN UNREASONABLE INCREASE IN PRICES; THE REFUSAL OR UNJUSTIFIED LIMITATION TO SELL OR RENDER SERVICES;...." WILL SUBJECT THE RESPONSIBLE PERSON TO THE PENALTIES SPECIFIED IN THE ARTICLE, WHICH INCLUDE FINES, IMPRISONMENT, AND/OR THE CLOSING OF THE BUSINESS. ARTICLE 1, DESCRIBING SCOPE OF LAW, MAKES NO SPECIFIC REFERENCE TO FOREIGN TRADE, EITHER TO INCLUDE OR EXCLUDE SUCH TRADE FROM LAW'S COVERAGE.

8. LEGAL CASE BASED ON EITHER OF ABOVE TWO LAWS WOULD APPEAR TO BE TENOUS, AND EMBASSY CONTINUES TO HOLD VIEW EXPRESSED IN PARA 8 OF REF B THAT THERE IS AT PRESENT NO CLEAR AND UNEQUIVOCAL LEGISLATION FORCING FIRMS TO SELL TO ALL FOREIGN CLIENTS, BUT ALSO THAT ABSENCE OF SUCH LEGISLATION SHOULD NOT BE RULING CONSIDERATION IN DECISION ON WAIVER OF US REGULATIONS. GOA POSSESSES SUFFICIENT OTHER AVENUES, INCLUDING THOSE REFERRED TO IN PARAS 1 AND 2 ABOVE, AND PARA 9 OF REF B, TO RETALIATE AGAINST ANY FIRM OR GROUP OF FIRMS IN ARGENTINA. SINCE MOST OF AVAILABLE MEANS ARE INDIRECT OR INVOLVE INTERPRETATION OF FLEXIBLE CRITERIA, SUCH RETALIATION COULD BE CARRIED OUT WITHOUT OBVIOUS OR DIRECT CONFRONTATION WITH USG.

9. TEXTS OF 1971 LAW ON PATENTS AND TECHNOLOGY (ENGLISH),  
1971 AND 1973 FOREIGN INVESTMENT LAWS (ENGLISH), ANTI-TRUST  
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LAW (SPAN.), AND PRICE CONTROL LAW (SPAN.), BEING POUCHED TO ARA/APU. SPANISH TEXT 1973 FOREIGN INVESTMENT LAW ENCLOSED WITH BA A-451, NOV 20, 1973. ALSO POUCHING COPY OF OPINION ARGENTINE LEGAL COUNSEL GIVEN EMBASSY BY CHRYSLER ARGENTINA.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Draft Date:** 10 DEC 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** collinp0  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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**Disposition History:** n/a  
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**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:**  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** A. STATE 233338; B. BA 7963; C. BA 8, 183  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** collinp0  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 16 JAN 2002  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <16-Jan-2002 by shawdg>; APPROVED <07 MAR 2002 by collinp0>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** ARGENTINE/CUBA TRADE - LEGAL QUESTIONS  
**TAGS:** ETRD, ECON, EFIN, EIND, CU, AR, US  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005